**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7511 OF 2006**

Liyaqat Ali Niyamat Ali Qazi .. Petitioner.

vs.

Ahmed Haji Abdul Karim. . .. Respondent.

Mr. P.N. Joshi and Kishore Patil

for petitioner.

Mr. Sachin Dhakephalkar for respondent.

**CORAM : A.P. DESHPANDE, J.**

**DATE : 24th November, 2006.**

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The petitioner is original defendant whereas the respondent is plaintiff. The plaintiff instituted a suit for perpetual injunction seeking to restrain the present petitioner from functioning as Secretary of Manmad Education Society. It is the case of the plaintiff that the petitioner is not entitled to function as Secretary of the Trust/Society. The suit was fixed on 6.7.2006

before the trial Court and the Court had adjourned the matter to a next date being 24.8.2006. The roznama reveals that both the parties were absent and hence the matter was adjourned for filing of say on Exhibit 26 to 24.8.2006. On the very next day, it appears from the roznama that the plaintiff's advocate moved an application for taking the case on board at Exhibit-29. Another application at Exhibit-30 was moved for amendment and the third was an affidavit filed in support of Exhibit-30. On 7th itself, the trial Court without affording any opportunity to the petitioner of being heard in the matter, passed an ex-parte order below Exhibit-30 and allowed Exhibit-30 viz., the application for amendment and being aggrieved by the order passed by the trial Court, the present writ petition has been filed calling in question the correctness of the order passed below Exhibit-30.

3. Two submissions are made by the learned counsel for the petitioner : (i) that the impugned order is passed in breach of principles of natural justice in as much as the petitioner was denied an opportunity of hearing before passing of the order and (ii) that the order is a non-speaking order and bereft of reasons which cannot stand the scrutiny of a judicial order.

4. The learned counsel for the respondent in

all fairness states that it does appear from the roznama that neither the petitioner nor his counsel was heard on 7th when the case was pre-poned and order came to be passed. If this be the case, the order is wholly unsustainable and deserves to be quashed and set aside.

5. In the result, the writ petition is allowed. The impugned order dated 7.7.2006 passed below Exhibit-30 in Regular Civil Suit No. 15/2006 by Civil Judge, Junior Division, Manmad, is quashed and set aside. The matter is remanded back to the trial Court with a direction to decide the application in accordance with law after affording an opportunity of being heard to the parties. Rule made absolute in above terms.

6. Certified copy of the roznama is taken on record.

**(A.P. Deshpande, J.)**